

Call to Order:

The meeting was called to order at 7:30 p.m. Present were Chairman, Paul Salafia, and members, Linn Anderson, Vincent Chiozzi, Joan Duff, John McDonnell, and associate member, Mark Yanowitz; also present were Paul Materazzo, Director of Planning, Lisa Schwarz, Senior Planner, and Jacki Byerley, Planner.

Celestial Circle:

The Board opened the public hearings that were continued from the Dec. 16th meeting on an application by Rayvon Realty Trust for a nine lot Definitive Subdivision Plan, entitled Celestial Circle, and a Special Permit for a Cluster Development and a Special Permit for Earth Movement, located off Sunset Rock Road. Chairman Salafia reviewed the specific items that would be discussed at this evening's meeting. They were: easements trash/recycling, and the catch basin on Sunset Rock Rd.

Ms. Byerley reviewed her memo to the Board, dated January 21, 2010, which included:

Easements:

Ms. Byerley reviewed the access easement that has been added to the plans along the property line of lot 4 and stated that a draft access easement over the private way of Celestial Circle has been submitted.

Open Space:

Ms. Byerley noted that the applicant has agreed to convey the open space to either the Town of Andover Conservation Commission or the Andover Village Improvement Society.

Ms. Byerley stated that the owner of record for a parcel of land on Timothy Drive, a portion of which is included in the site area for Celestial Circle is SND Realty Trust, rather than Rayvon Realty Trust (the applicant). Changes reflecting accurate ownership were added to the plan and applications.

Should the proposed subdivision be approved, a form A plan for the reconfigured Timothy Drive parcel would need to be approved prior to the recordation of the subdivision.

Trash/Recycling:

Ms. Byerley noted that DPW has agreed to provide trash and recycling services on Celestial Circle with the understanding that the town and/or its private vendors will only provide these services, as long as certain road conditions are maintained. The roadway must be maintained so that it is safe and passable conditions and free and clear of any obstructions. If at any time the road is deemed not passable by either the Town or the recycling and trash vendors, they reserve the right to refuse to collect trash and recycling curbside. The Town, recycling and trash vendors will be held harmless against any maintenance claims against them for damage done.

Catch Basin in Sunset Rock Rd.:

Ms. Byerley reviewed the additional catch basin that was added to the plan on the east side of Sunset Rock Rd, as requested by DPW. She also noted that DPW is planning to extend the curb further up Sunset Rock Rd., in order to help alleviate the surface water runoff that currently flows onto the neighboring properties.

Dan Koravos of DK Engineering, representing the applicant, gave an overview of the revised plans, including the additional easement along lot 4, ANR plan, and the additional catch basin in

Celestial Circle (cont.):**Catch Basin in Sunset Rock Rd.:**

Sunset Rock Road. Attorney Mark Johnson, representing the applicant, noted that he has submitted the draft easement that would allow Town to access the roadway, as the Board requested.

Chairman Salafia suggested that the public hearings be kept open for written comments only, and he noted the Board will probably schedule a special meeting to deliberate. Lynne Hunter, of 30 Sunset Rock Rd., expressed concern regarding the safety of the school aged children, waiting for the school bus at the Celestial Circle site, especially as it relates to the location of the proposed roadway; and she noted she will submit her concerns in writing. Attorney Andrew Caffrey, representing Mr. Gable, questioned if the catch basin would be part of the private drainage system. Mr. Koravos noted it would be part of the Town's drainage system. Mr. & Mrs. Perry, of 25 Timothy Drive, expressed concern regarding runoff to Timothy Drive. They asked if the water infiltration would be revisited in the event that there was a change post-development. Mr. Koravos noted there is no plan to capture the drainage that goes behind Timothy Drive. The stormwater runoff there should be less, or not more than the same. This is facilitated by the installation of dry wells to infiltrate rooftop runoff.

Mr. Materazzo noted the Town's Construction Supervisor and the Fire Prevention Officer are involved in reviewing any blasting activity for the site. If problems arise, causing a different situation than expected, then the Building Inspector will issue an order to investigate or contact the developer directly. Mrs. Perry asked what recourse abutters had if blasting caused any damage. Ms. Byerley noted that Fire Prevention deals with blasting, and a pre-blast survey is done by the blasting company.

The Board discussed the drainage, catch basins, swales, the maintenance of the drainage system, the homeowners' association documents, access easements and maintenance documents. On a motion by Ms. Anderson, seconded by Mr. Chiozzi, the Board voted to continue the public hearings on an application by Rayvon Realty Trust for a nine lot Definitive Subdivision Plan, entitled Celestial Circle, and a Special Permit for a Cluster Development and a Special Permit for Earth Movement, located off Sunset Rock Road, to February 9th at 7:30. No further discussion will take place. The sole purpose for continuing the hearings is to provide for written comments only to be entered into the public record. **Vote** Unanimous (5-0)

60-62 Essex Street:

The Board opened the public hearings that were continued from the Jan. 12th meeting on an application by Miami Stuart Realty, LLC, for a Special Permit for a Planned Development Multi-family or Mixed Use project located at 60-62 Essex Street. Ms. Schwarz reviewed her memo to the Board, dated January 21, 2010, listing the outstanding issues. Ms. Schwarz noted that she has spoken with DPW, regarding their capacity or availability of time to do an in-house review of the drainage. DPW has responded that they do not have the capacity or the time. Steve Stapinski, of Merrimack Engineering, representing the applicant, gave an overview of the revised plans and noted the present proposal generates less run-off then the plan approved in 2007 and less run-off than currently exists on site. The Board was in consensus that an independent peer review is not warranted in this instance. The Board discussed the driveway width, with some

60-62 Essex Street (cont.):

Board members expressing concern with the driveway width at 15.3' may be too narrow, especially during the winter months. Mr. Stapinski reviewed the plans and noted on sheet 2 there is a designated snow storage area behind the two-family. He also noted that the Board previously approved the driveway width at 15.3' for the Kelleher application for the same site. Mr. Stapinski noted that the plan submitted for the duplex is smaller than what has been submitted in the past, but he would try to increase the driveway width. The Board discussed the interpretation of density, especially as it relates to the density of this project. Town Counsel, Thomas Urbelis, suggested the Board ask the Inspector of Buildings for an interpretation of density. Some Board members expressed concern that there is no green space on-site. Ms. Schwarz noted that DPW has not reviewed the updated plans that were received last Monday. She also discussed the affordable unit and the developer's suggestion that a cash grant could be made to the Andover Housing Trust in lieu of designating and making available an affordable unit at this site. Mr. Stapinski noted that the advantage of a Special Permit for a Planned Development is that it allows for increased density with conditions. Ms. Schwarz noted she will talk to the Inspector of Buildings regarding the interpretation of density and have DPW's final comments for the next meeting. On a motion by Ms. Anderson seconded by Mr. McDonnell the Board voted to continue the public hearing on an application by Miami Stuart Realty, LLC, for a Special Permit for a Planned Development Multi-family or Mixed Use located at 60-62 Essex Street until February 9th at 7:45 pm. **Vote** Unanimous (5-0)

Reynolds Street:

The Board opened the continued discussion from December 16th on the request of Vale Realty Trust regarding the Special Permit for Earth Removal SP04-12; at issue is whether or not the special permit had expired. Ms. Duff recused herself from the discussion. Attorney Corina Hale representing James Lyons, submitted a ten (10) page letter and documents to the Board. Town Counsel Thomas Urbelis noted he received the information at 4:00 p.m. today. Chairman Salafia noted that the Board is not prepared to read the information tonight. Attorney Urbelis suggested that Attorney Hale summarize her procedural argument as to what they are asking the Board to do. The Board questioned who initiated the discussion. Attorney Borenstein representing Vale Realty Trust stated they requested the discussion to determine if the Earth Removal special permit was still valid.

Attorney Hale summarized her procedural argument and asked the Board to use judicial estoppels. Attorney Hale noted that in one document, Mr. Johnson claimed to have done substantial work on Reynolds Street, but in a different public document, Mr. Johnson claimed the work done was not in conjunction with the Reynolds Street lot and the appeals have prevented the issuance of a building permit. Attorney Hale stated the Earth Removal special permit was not appealed and asked the Board to find that the 24 month time period for special permits has lapsed. Attorney Hale is also requesting the definitive subdivision plans, which were submitted to the Planning Board on November 10, 2009 for endorsement, be rescinded. Mr. McDonnell stated the argument is contradictory: did he or didn't he do earth removal work. Attorney Hale stated there are two different lots, the Stier lot and the Barash lot, and reviewed documents within her letter to the Board dated January 26, 2010. Mr. McDonnell stated that if the road is used for both lots, a modification of the subdivision approval would be needed.

Reynolds Street (cont.):

Attorney Hale noted that Johnson sought a deletion of condition # 8 of the Board's approval & sentence regarding the placement of the pavement within the right of way and noted such a modification would require a public hearing under Ch. 41 Section 81 C & 81W.

Attorney Borenstein noted they are asking for a finding that the special permit is still valid, they are not asking for a modification. Chairman Salafia noted that the Board will review Attorney Hale's submittal. Attorney Borenstein noted that the work has commenced under the subdivision approval but has not been completed and noted that the subdivision approval was appealed and affirmed. Ms. Anderson asked whether or not the plan had been endorsed. Ms. Byerley noted that the roadway layout has not changed but the pavement placed within the layout was shifted to one side.

James Lyons, of 12 Highvale Lane, stated that Attorney Hale was not present in 2005 when the Planning Board voted unanimously that the work wasn't related to the Barash lot, and he reviewed Attorney Johnson's letter to the Board dated April 17, 2008 requesting a minor modification be put on the Board's agenda. Ms. Byerley gave a detailed overview of special permits outlined in the Zoning By-law. Attorney Urbelis reviewed the Zoning By-law on special permits and noted if a variance is not exercised within 1 year it automatically lapses but special permits do not automatically lapse after 2 years; the special permit granting authority needs to determine that a special permit has lapsed. Attorney Urbelis stated that the appeal for the subdivision was final in Jan. 2007 and that he agrees with Attorney Borenstien that good cause is the operative issue even if no work has been done. Attorney Urbelis further noted that the Ballardvale Historic District Commission decision was appealed. Ms. Anderson suggested that the Planning staff ensure that the plan is what the Board approved before endorsing it. Mr. Chiozzi noted that he is unsure if the Board previously voted that construction has commenced. On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board found that, due to the delays encountered, there was good cause for delay in completing the work specified in SP04-12; therefore Earth Movement SP04-12 has not lapsed. **Vote** (3-1) Mr. Salafia, Ms. Anderson, and Mr. McDonnell voting yes; and Mr. Chiozzi voting no.

Vraj Circle:

On a motion by Ms. Anderson, seconded by Mr. McDonnell, the Board voted to re-affirm their previous definitive plan approval of Vraj Circle Definitive Subdivision Plan, Special Permit for Earth Movement, Special Permit – Watershed Protection Overlay District and Special Permit for Disturbance of Slopes in Excess of 35%. Said re-affirmation is for the sole purpose of recording the recorded plan at the Essex North Registry of Deeds. **Vote** Unanimous (5-0)

Adjournment: The Board voted to adjourn the meeting at 10:02 p.m.